Supreme Court, U.S.
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NO. 87-409

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

JOHN J. BUDINSKY, et al,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed the district court decision that Pennsylvania's federally approved regulatory program, which provides standards for all surface mining, including surface mining on sites of less than two acres, is a more stringent land use and environmental control specifically permitted under the federal Surface Mining and Control and Reclamation Act of 1977 ("SMCRA")?

PARTIES

John J. Budinsky, individually and trading and doing business as Colpat Mine; Commonwealth of Pennsylvania, Department of Environmental Resources; Nicholas DeBenedictus, Hugh V. Archer; Tony Smerdel.

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 819 F.2d 418 (3d Cir. 1987). The opinion of the District Court is an unreported memorandum opinion. Copies of each are attached to the Petition for Certiorari as appendices A and B respectively.

JURISDICTION

The final judgment of the Court of Appeals was entered on May 27, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

STATEMENT

Petitioner John Budinsky is the owner of a small bituminous coal mine in Perry Township, Greene County, Pennsylvania known as the Colpat Mine. On November 28, 1977, the Pennsylvania Department of Environmental Resources (DER) issued Budinsky a mine drainage permit, which allowed him to mine 40,000 tons of coal per year. The combined surface and underground mining activities at the Colpat Mine disturbed less than two acres of surface area.

In 1977, Congress enacted the SMCRA, the stated purpose of which is "to protect society and environment from the adverse effects of surface coal mining operations."[1] The SMCRA permits states to exercise exclusive jurisdiction over the regulation of surface coal mining and reclamation operations if they develop and submit for approval to the Secretary of the Interior a program which demonstrates the state's ability to enforce the provisions of the Act and fulfill its purposes.[2] The Act further provides that it does not supersede any state law or regulation except to the extent that such state law or regulation may be inconsistent with the provisions

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1 30 U.S.C. § 1202(a).

2 30 U.S.C. § 1253(a).

of this chapter and that more stringent controls by a state were not inconsistent.[3] Finally, the Act provides that its provisions were not applicable to the extraction of coal for commercial purposes where the surface mining operation affects two acres or less.[4]

On October 10, 1980, the Pennsylvania General Assembly amended its statutes and DER amended its regulations in light of the SMCRA. These statutes and regulations were approved by the Federal Department of the Interior. DER advised Budinsky on March 31, 1983 that

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[3] 30 U.S.C. § 1255(a).

[4] 30 U.S.C. § 1278(2).

his current mine drainage permit would allow continued activity at the Colpat Mine until April 24, 1984, and that he would then have to reapply under Pennsylvania's new statutory and regulatory provisions that had been approved by the Department of the Interior. In July 1984, DER ordered Budinsky to cease operations until he submitted the repermitting application. The Pennsylvania Environmental Hearing Board denied Budinsky's appeal and on July 27, 1986, Budinsky filed an action in the District Court seeking declaratory and injunctive relief. The Commonwealths' motion to dismiss was granted because the court determined that the complaint failed to state a claim upon which relief could be granted in light of specific statutory authority permitting states to establish

more stringent standards than those established by federal statute. From that decision Budinsky appealed to the Court of Appeals and which affirmed the decision of the District Court.

ARGUMENT

Both the clear language of SMCRA and the legislative history affirm the correctness of the decision of the court of appeals, which upheld the dismissal of Budinsky's complaint.

The Court of Appeals, in an analysis on which we rely, points out that the language of SMCRA authorizes states to adopt more stringent regulations of surface coal mining and reclamation operations than those provided by SMCRA and expressly provides that such controls are not to be construed as being inconsistent with SMCRA.[5] In face of the express language of the statute, it

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[5] Appendix A Budinsky Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

is unnecessary to delve into the legislative history, as petitioner suggests.

Despite the Court of Appeals' analysis, which gives effect to each of the relevant provisions of SMCRA, Budinsky suggests that this Court should find the Act facially inconsistent by looking only at the inapplicability of the Act to surface mining operations effecting two acres or less and the express authorization to states to adopt more stringent controls and regulations of surface coal mining than the Act permits. However, as the Court of Appeals properly concluded, there is hardly any conflict between limitations on federal regulation and authorization for more extensive state regulations if local conditions so require.

Budinsky next (Pet. 10) suggests that the legislative history of a 1987 SMCRA amendment should be used to interpret the 1977 SMCRA.[6] Budinsky relies upon the following language:

> In 1977, Congress chose to preempt the entire field, but allowed the extraction of coal which effected two acres or less to be exempt. Pursuant to that exemption in SMCRA, states were free to adopt or continue regulatory schemes for these smaller sites.

But this language plainly supports our position that states can adopt or continue regulatory schemes which were applicable to smaller sites. This is the statutory and regulatory plan that

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[6] H.R. Rep. No. 100-59, 100th Cong., First Sess. (1987).

Pennsylvania followed and which the Secretary of the Interior approved. It is also interesting to note that the legislative history relied upon by Budinsky is for legislation eliminating the two acre exemption for SMCRA.[7]

Rule 17 of the United States Supreme Court Rules sets forth considerations governing review of certiorari. The question presented by petitioner concerns the interpretation of a federal statute by the Court of Appeals which is supported by the express language of that statute and, contrary to petitioner's contention, the legislative history. The question does not present a conflict between decisions of the federal courts of appeals or between a

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[7] U.S. Code and Cong. and Admin. News, No. 5, July, 1987, pp. 258-259.

state supreme court and a court of appeals. The decision of the Court of Appeals does not conflict with prior decisions of this Court, but rather affirms the rights of states to adopt the statutory and regulatory controls over surface mining operations that they are expressly permitted to adopt under SMCRA.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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